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IN THE MATTER OF

THE ONTARIO WORKMEN'S COMPENSATION ACT

SUBMISSION TO

THE COMMISSION OF INQUIRY

THE HONOURABLE MR. JUSTICE GEORGE A. MCGILLVRAY

COMMISSIONER

BY

THE PROVINCIAL FEDERATION OF ONTARIO

PROFESSIONAL FIRE FIGHTERS

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SUBMISSION TO THE COMMISSION OF INQUIRY
INTO THE WORKMEN'S COMPENSATION ACT

Introduction

The Provincial Federation of Ontario Professional Fire Fighters wish to express their appreciation of having the opportunity of presenting this submission to you. As a Federation whose entire membership, for all practical purposes, is covered by the provisions of the Workmen's Compensation Act of Ontario, we think that the general principles enunciated by the Royal Commission setting the Act into operation, were well founded, in that this is only the third time the Act has been reviewed by a Royal Commission since the commencement of the Act some 50 years ago. Neither of the first two Royal Commissions were confronted with briefs from either Labour or Management opposing the adjudication system as was originally adopted by the Ontario Legislature in 1914.

The absence of any complaints from the employer or employee side as to the system of adjudication, as was in effect prior to 1965, is some evidence of the lack of dissatisfaction in the Act itself. We are of the opinion that the principle of the Act is good, in that it purports to provide protection for the injured workman, without undue delay. It is considered, however, that some revision is indicated to insure that the Act serves the purposes for which it was intended and designed.

Appeal System

Our Federation is opposed to the new system of appeals introduced by the Ontario Workmen's Compensation Board in March 1965. There is a general feeling that the new system is needlessly complicated, time consuming and introduces a degree of formality in dealing with the Board.



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It is our contention that this was never contemplated by the designers of the Act initially and against which warnings were sounded on each occasion of review of the Act and its administration. It is our submission that the introduction of the Appeal Tribunal hearing involves great hardship for the workman and almost invariably requires him to procure legal counsel or other representation. There is a distinct "court room" atmosphere with the new Appeal Tribunal, involving summaries of evidence before the hearing. These contain professional medical terms completely foreign to all but qualified medical practitioners and most confusing to the workman.

When the late Chief Justice Sir William Meredith was drafting the Act he said one of the chief purposes was to get rid of the "nuisance of litigation". His Lordship envisaged a system free of legal technicalities and formalities. His Lordship enunciated, among others, one basic fundamental respecting workmans compensation which we believe is worth repeating to this Royal Commission, namely; that the Board should include one who has a thorough knowledge of the problems of working people and the hazards of industrial employment.

It is our contention that His Lordship's wisdom and foresight has been abundantly demonstrated in the years following the first Royal Commission report to the Ontario Legislature. Until the recent amendment, introducing the Appeal Tribunal, the Board was readily accessible to the employers and the injured workman; the employers, injured workman or his representative having had ready access directly with the Board Members. This we consider a basic and fundamental requirement, not with the intention of influencing or altering decisions, but rather

to secure additional information respecting Sections of the Act, or the facts of the case at hand, to permit a proper decision as to whether or not a claim is justified.

The Royal Commission respecting the Workmen's Compensation Act by the Honourable Mr. Justice W. D. Roach who reported to the Legislature in 1952, studied in detail the Board's appeal procedure and the need for availability of Board Members to employers, injured workmen and their representatives. The following is a direct quotation from this report which leaves no doubt as to His Lordship's opinion in this respect.

"Labour and management disagreed on other matters but they were unanimous on this, namely, that there should not be even a limited right of appeal to the courts. The Act has always prohibited any appeals to the courts and when, after thirty-five years' experience in its operations, these two groups, being the ones most vitally interested in its operation, are unanimous on this question, it would be folly to even think of making the suggested change".

Both Mr. Justice Middleton and Mr. Justice Roach examined this phase of the Board's operations in a most critical manner, since representations were made to both Commissions that "justice" was not being done resulting in the rights of the workman being jeopardized. It is considered something more than significant that neither of these learned Justices saw fit to recommend any change whatsoever in the existing procedure.

Much publicity has been given to the new appeal procedure as outlined by the Chairman of the Board. He contends that this new system is necessary to ensure that justice is done, that workmen know their rights and the said new system will be much more efficient. In our opinion this is directly contrary to the facts.

In the years prior to March 1965 the Claims Officer handling the initial adjudication of a claim sized up the situation on the basis of reports then in his possession and determined whether he felt a clearer medical diagnosis should be obtained and if so this was immediately referred to the Board's Medical Department which made the necessary arrangements. If it was considered there was a difference in medical opinion of certified medical personnel of equal standing then the file was forwarded to the appropriate Board division for the appointment of a Medical Referee as provided by the Statute. If the Medical Referee was of the opinion that the conflict of opinions of the Medical Personnel could not be readily resolved by mail or telephone, he immediately ordered a local investigation by a member of the Board's investigation staff. All of these procedures were carried out within a matter of days.

If, however, there was sufficient information on the file to satisfy the Claims Officer that the workman did not have entitlement under the Act, then the file went immediately to a committee of three. These were senior claims specialists with years of experience with the Board who sat in review on the decision of the claims adjudicating group.

This committee of highly skilled personnel reviewed all aspects of the claim and if in agreement that some further action should be taken to ensure that a workman was not deprived of his entitlement the claim was referred back to the Claims Adjudicating Officer with directions for the further actions to be carried out. If, however, they agreed that the evidence clearly showed the workman did not have entitlement to benefits, the claim went back to the initial adjudicating Officer to send out the appropriate notices.

This was a continuous file movement with the review in most cases being conducted within a matter of hours after its handling by the Claims Officer.

If the workman felt he had been unjustly dealt with it was only necessary for him to write to the Board requesting a review by the Board or its Committee. The workman was advised and knew wherein his claim had failed, whether on medical or non-medical grounds.

Under the present or new system the Claims Adjudicating Officer must make his decision on the basis of the information on the file at the time he handles it. A written notice is then forwarded to the workman advising him that he may appeal the decision if he writes setting out his reasons to the Board's Review Committee. After he has written to the Review Committee and it has reviewed the file it must communicate its decision to the workman in writing and advise him that he may have a summary of evidence if he so desires and that he may appeal to the Appeal Tribunal. Naturally the workman must again write asking for a summary of evidence because up until that time he has no idea why his claim failed and specifically whether it did or did not come within the provisions of the Act on medical or non-medical grounds. He must then review this highly technical medical summary, analyse it and consider his position and attempt to set out his reasons for requesting a hearing before the Board's Appeal Tribunal. His task is a formidable one and he is completely unable to understand why his claim was rejected or what he should do about it.

We would refer your Lordship to the type of medical summaries sent to the workmen. These appear in Hansard, June 20th 1966.

"Examination of left lower extremities reveals that he has good quads. There is evidence of slight weakness of the peroneal muscles as well as dorsal flexors of his foot and posterior tibial as well. He has definite decrease sensation particularly over the medial aspect of the joint line and distally where he had previous skin grafts. He has decreased sensation along the L5 distribution and also along the S1 area. He feels that this decrease in sensation particularly over the lateral part of this leg has increased since the examination by Dr.-- This is particularly true to light touch, pin prick and deep pressure. Vibration senses are all active and equal.

I feel that there is considerable element of pain and weakness in his left leg likely due to the original trauma. This may be in the nature of muscle weakness or causalgia which is difficult to pinpoint or explain objectively. There is an element of low back strain with evidence of pain along the sacroiliac joint which could be possibly accounted for due to previous injury.

Having not seen this man previously I do not know the extent of increased numbness and peripheral nerve root symptoms he is now having as compared to his past physical findings. He does have a definite decrease sensation along the L5 distribution and somewhat in the S1 area. Decreased sensation in the skin graft area and distally is quite obvious."

"X-rays showed a large amount of spurring of the lumbar vertebra. The L5/S1 disc was thinned and the IV foramina at this level were congested. There were also changes at L4/5. The spurring occupied most of the lumbar spine. A diagnosis of lumbo sacral strain was made on the basis of old degenerative disc disease, and osteoarthritis of the spine".

If the Appeal Tribunal rejects a claim after the hearing, the man must write asking for a copy of the evidence of the hearing. If he is fortunate he may be able to complete his first hearing within eight to ten weeks following the accident. The workmen is certain the summaries are loaded against him, not only because they are composed in highly technical medical terms but because he feels they contain only the facts which support the rejection of his claim.

It is to the Board's credit that since 1915 up to early in 1965 it carried on the administration of the Act in an informal manner, devoid of legal formalities and the workmen whether organized or unorganized, knew their claims failed

because of medical or non-medial reasons. The workman also knew that a case before the Ontario Workmen's Compensation Board was never closed and could be reviewed by merely writing a letter to the Board. In this connection it is appropriate to reproduce an information sheet circulated by the Board some number of years ago. Organized labour in Ontario has taken very little issue with the program as set out here.

- 1) No courts
- 2) No technicalities
- 3) No lawyers required unless the injured workman himself desires such Counsel
- 4) No private insurance
- 5) No waivers
- 6) No assignments unless approved by the Board
- 7) No closed cases
- 8) No protracted delays
- 9) No medical controversies
- 10) No limit to time or amount of compensation up to maximum annual salary
- 11) No limit to time or cost of medical aid
- 12) No failure of compensation because of employer's default
- 13) No contributions by workmen
- 14) No adversary relationship between employer and employee
- 15) No commissions
- 16) No profits

We have noted in Hansard, June 20th 1966 that the Honourable H. L. Rowntree read a prepared statement to the Legislature which went to some length to quote Sir Guy Powles, Ombudsman for New Zealand and Mr. Justice Tysoe of the British Columbia Court as supporting the new system. Neither of these eminent persons made any contact, to our knowledge, whatsoever with any of the Labour Organizations in this Province.

They had at best an extremely limited opportunity to examine or assess the system and presumably were quite unaware and uninformed of the dissatisfaction which was to manifest itself among Labour Organizations respecting the new system.

Earnings

It is the submission of the Provincial Federation of Ontario Professional Fire Fighters that the ceiling of \$6,000.00 on which compensation payments are based is too low for the present standard of wages throughout industry to-day. It is our contention that the workman should be paid during periods of total temporary disability in accordance with a standard which will equalize his average earnings during this period. The base for compensation payments to the injured workman should be realistic enough to provide the wage earner with approximately the same take home pay which he enjoyed when working.

Payments to Dependants

One of the fundamentals established by Sir William Meredith was that payments in the form of compensation as a result of an accident should bear a direct relationship to a man's earnings. This would ensure that a workman's family would not be forced to accept a lower standard of living than that which he had attained by his skill and his resulting wages.

The Federation is very clear and is in unanimous agreement with other organizations and associations that a widow or an invalid husband cannot exist with any degree of respect, comfort or decency on the allowances presently in force under the Act, Section 37.

We submit that a widow who becomes entitled to the benefits under the terms of the Workmen's Compensation Act

should receive a minimum of 75% of her late husband's earnings as long as she remains a widow. We believe that a widow receiving this more realistic pension benefit could maintain herself and her family on an economic level close to that to which she was accustomed by virtue of her late husband's earnings. Dependant children have to be fed and clothed and educated and the benefits now provided in the Workmen's Compensation Act for these dependants fall far short of the actual requirements in this present society.

The Federation is not unmindful of the fact that many of the workmen who are killed in their line of endeavour leave some type of widow's pension accruing from superannuation funds, employer - employee retirement systems, et cetera. We submit to you, Sir, that widows pension payments, referred to above, should not be calculated to adversely affect those persons who will or may not be in receipt of such benefits.

Section 37 (3) b and c limit the total amount which can be paid to one dependant family. This places an unduly onerous financial strain on a large family and inflicts unbearable hardship. It is our firm belief that this restriction should be removed from the Statute.

Permanent Partial Disability

The Federation is concerned with persons who fall within this category for two reasons. Firstly, pensions awarded for permanent partial disability are static and decrease every year in direct proportion to the increase of the cost-of-living. Secondly, it is one of the most difficult tasks to decide as to the proper percentage to which a man is disabled who has lost a leg. No rule of thumb can be devised to adequately size up loss of earning power. The loss of a limb by one workman may result in a decrease in his ability to earn to the extent of

75% or even 100% while another the resulting disability is less: each case must be examined in the light of the workman's ability to work or earn a living with his disability.

The Federation submits to Your Lordship that there should be a provision written into the Act to provide for an escalator type arrangement to adjust pensions awarded for permanent partial disability, so as to keep these pensions abreast of the expansion of the economy.

We also believe that some provision should be made in the Act to allow the Board to take into consideration the employee's earning power before he was permanently disabled. It is our contention that where a man has suffered a permanent disability which does not allow him to continue in his line of employment, there should be a Section in the Act to allow the Board to adjust the pension to approximate a considerable percentage of his earnings prior to the accident.

Occupational Hazards

In the submission of this Brief by the Provincial Federation of Ontario Professional Fire Fighters, it is intended to place before you a matter which has given grave concern to the Federation over a period of years, namely, the serious occupational hazard peculiar to professional Fire Fighters in the performance of their duties, resulting in an increasing number of cases of injury or death from arterial hypertension, heart or respiratory disease.

In this connection the Federation wish to refer Your Lordship to a paper on 'Firefighting and Heart Disease' by Dr. Nathaniel E. Reich, published in 'Diseases of the Chest' the official journal of the American College of Physicians,

Volume 24, No. 3 (Page 304), September, 1953. This article is reproduced in full in this Brief. The Federation would draw your attention to Dr. Reich's summary of his conclusions in the article.

Summary

- "1. Hypertension Coronary Thrombosis - the anginal syndrome and manifestations of accelerated atheromatous changes are especially prone to occur in firemen and related dangerous occupations because of certain mental and physical factors associated with these occupations.
2. Adequate experimental and clinical evidence has been accumulated to show that the stresses and strains of firefighting, environmental extremes, trauma and shock, burns, gases and smokes, may act as predisposing factors in the causation of several cardiac disorders.
3. Aggravation of pre-existing heart disease may also occur in the presence of the above factors."

In submitting the Brief, the Federation is not unmindful of the existing legislation in the Province of Ontario, which by amendment in 1963 provided that the term "accident" as used in the Act includes "disablement arising out of and in the course of employment". The Federation recognizes the fact that where Fire Fighters die or are disabled arising out of and in the course of employment some form of compensation is provided for them under the Workmen's Compensation Act. The real concern on behalf of the Federation and its members is that in a large number of cases, if not a majority of cases, it is extremely difficult if not impossible to establish that the Fire Fighter suffered arterial hypertension, heart or

respiratory disease arising out of and in the course of his employment. Indeed, it is a very difficult and neat question even for medical experts to determine that the disablement or decease of the Fire Fighter arose out of and in the course of his employment and this, notwithstanding the fact that a large number of studies, in fact all of the studies which the Federation has been able to discover and study, clearly establish that Fire Fighters have the highest standardized relative index of mortality for the principal cardio-vascular diseases.

The Federation wishes to refer Your Lordship to a study made by Dr. E. Mastromatteo of Toronto, published in the American Medical Association Archives of Industrial Health, September 1959, Volume XX, pp 227 - 233. A copy of this study is separate to the brief.

The medical profession generally has recognized for many years that arterial hypertension, heart and respiratory diseases are extremely realistic occupational hazards for Fire Fighters. Occupational hazards can be divided into two classifications. The first of these, injury, is usually obvious. A Fire Fighter breaks his leg or arm, has it treated and eventually returns to duty. There is rarely any question that the injury was related to his work, that he was disabled as a result of this work and is entitled to compensation. The second, disease is much less obvious. Either disease or injury may be primary or secondary. The primary disabling conditions are those that are wholly due to fire department activity. The secondary are those which have been aggravated by such activity.

In this connection we draw your attention to the prevalence of special legislation throughout the United States of America and other parts of Canada which has the effect of protecting Fire Fighters and assisting them in having this

occupational hazard recognized in settlement of claims for disablement or death from these diseases. All of these enactments have the effect, in varying degrees, of creating a presumption in the case of Fire Fighters who suffer disablement or death from these diseases, that the disablement or death from these diseases arose out of and in the course of the Fire Fighters' employment. For your information there is attached to this brief copies of a large number of these enactments from various jurisdictions.

The Honourable W. F. A. Turgeon, P. C., dwelt at some length with respect to a disablement, by reason of the work the employee was called on to do. For your convenience and information a partial text of that report is reproduced below taken from page 52: In this connection His Lordship is speaking of the definition of "accident" as it appears in the Alberta Act.

"I think this definition of "accident" is particularly useful in what it says about disablement, because experience shows that a man may become disabled in some part of his physical structure by reason of the work he is called upon to do. Instances of this have been found in the case of workmen employed for long periods in the guidance and control by hand of pneumatic drills which produce violent vibrations causing eventually a total or partial inability in the workman to use his arms for normal working purposes. When this condition has become fixed and ascertained, the workman is in the same position as if his whole or partial disablement had been brought on by an accident occurring at that particular time.

Bordering on this kind of case although not wholly assimilable to it, is the condition of the workman who has, by reasons of a defective physical condition, a pre-disposition to injury or death arising out of the nature of his employment. An instance of this kind is to be found in the American case of Town of Cicero vs. Industrial Commission (Supreme Court of Illinois (1949) 404 Ill.487, 89 N.E. 2d, 354)

In this case one Miller, lieutenant in the fire department of Cicero, had suffered from heart disease (chronic myocarditis) for at least five years prior to his death. He had been advised by his physician that he should quit his job because it was too strenuous for him. On the morning of January 22nd, 1946 a fire occurred at a restaurant near the station where he was on duty. He rushed to the fire by truck, ran into the building and began directing his men in the extinguishment of the fire. Suddenly he fell to the floor, was taken to a hospital and was found to be dead.

In disposing of the case the court said that the rule to be followed, was 'that if a workman's existing physical structure, whatever it may be, gives way under the stress of his usual labour, his death is an accident which arises out of his employment.'

The judgment then proceeds to hold:

'In the instant case, the fact that Miller was suffering from chronic myocarditis, predisposing him to collapse and death is of no consequence. Whether he might have died in the same way in the absence of any exertion at all, while sitting in his own home, or whether he might have suffered collapse if he had stayed at home and not worked that day is immaterial. The question for the Commission was whether the work he was doing in connection with fighting the fire caused, or contributed to cause his collapse and death' "

The Provincial Federation of Ontario Professional Fire Fighters bring to your attention an addition to the Manitoba Act made and done at a regular meeting of the Workmen's Compensation Board of Manitoba held on the fourteenth day of July A.D. 1966. Quote:

"Manitoba Workmen's Compensation Board Regulation 1/1966
made under
THE WORKMEN'S COMPENSATION ACT, R.S.M. 1954, c297
respecting
Full-Time Municipal Fire Fighters.

1. In this regulation 'fire-fighter' means a member of a professional full-time municipal fire-fighting department.
2. Where a full-time fire-fighter suffers a heart attack
 - (a) after he has entered upon, and while he is still engaged in the actual answering of a fire-call and the fighting of a conflagration; or
 - (b) while he is actually engaged upon prescribed training phases of his work involving substantial physical, mental or nervous tension or strain, and
 - (c) the fire-fighter during the two years immediately preceding any occurrence upon which a claim is based has been in continuous service as a member of the department; and
 - (d) at or after the time of entering such service the fire-fighter has undergone a physical examination specifically including an examination of the circulatory

system (if such an examination is required by the employing department), following which examination he was duly approved for service as a fire-fighter, the injury shall be deemed to have been suffered in the line of duty and to have arisen out of, and in the course of his employment, unless the contrary is proved.

3. A fire-fighter who has had a heart attack, whether compensable or not, but who has thereafter been medically certified to be fit for service as a fire-fighter, is entitled to the benefit of section 2 hereof.
4. It being recognized that lung injury consequent upon inhalation of smoke, gases and fumes can be cumulative and progressive in whole or part, a fire-fighter who becomes disabled by reason of lung injury is, unless the contrary is proved, deemed to have incurred that disability in the course of, and arising out of his employment, if the type of lung injury by which he is disabled is generally accepted in medical opinion as resulting from the inhalation of smoke, or gases, or fumes, or any two or more of these causes.
5. It being recognized that the inhalation of carbon monoxide frequently occurs in the course of fire-fighting, but that the human body has the capability to rid itself of carbon monoxide quickly and completely if there is not actual physical collapse at the time of exposure, the presumption set out in section 4 applies only where a medical ruling of inhalation of and disability by reason of the inhalation of carbon monoxide is made within forty-eight hours of the exposure claimed as the cause of the disability.
6. This regulation sets out certain presumptions to be applied to claims involving fire-fighters and these presumptions are additional to the basic right of every applicant workman to have his claim determined upon its real merits and justice and facts of his case.

The foregoing, Manitoba Workmen's Compensation Board Regulation 1/1966, provides protection for Fire Fighters who become disabled as a result of an aggravation of a pre-existing cardio-vascular or respiratory disorder. The effect of the regulation, we submit, ^{is} that it creates a presumption and places the onus on the Board rather than the Fire Fighter rebut the evidence. It is our submission, Your Lordship, that a similar provision be made available for the professional fire fighters in the Province of Ontario. With this we respectfully rest our case with you.

THE PROVINCIAL FEDERATION OF ONTARIO PROFESSIONAL
FIRE FIGHTERS

R.S. Chambers
President

E. Hothersall
Secretary

S U M M A R Y

1. Review appeals procedure and revert to that which was in effect prior to March 1965.
2. Remove the \$6,000.00 ceiling on earnings.
3. Raise widows pensions to provide 75% of husband's earnings at time of accident.
4. Provide adequate pensions for employees who suffer permanent partial disability.
5. Include a presumptive clause in the Act to cover occupational hazards of fire fighters

